

ITEL

Itel Rail Corporation

550 California Street
San Francisco, CA 94104
(415) 984-4200

December 13, 1990

Hon. Sidney L. Strickland, Jr., Esq.
Secretary
Interstate Commerce Commission
Washington, DC 20423

15642 BB
DEC 14 1990 - 10 35 AM

INTERSTATE COMMERCE COMMISSION

0-348A016

Re: Schedule No. 23

Dear Mr. Strickland:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$15 recordation fee.

Please record this Amendment under Master Lease No. 2197-00 dated May 5, 1988, between Itel Rail Corporation and Hartford and Slocomb Railroad Company, which was filed with the ICC on May 13, 1988, under Recordation No. 15642.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation (Lessor)
550 California Street
San Francisco, California 94104

Hartford and Slocomb Railroad Company (Lessee)
P.O. Box 2243
Dothan, Alabama 36302

This Schedule adds to the Lease Agreement twelve (12) 50'6", 70-ton, Plate B, XM boxcars bearing reporting marks HS 5003-5246 (n.s.).

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Assistant

15642-BB
DEC 14 1990 - 10 35 AM

INTERSTATE COMMERCE COMMISSION SCHEDULE NO. 23

15642 -
ICC
Copy

THIS SCHEDULE No. 23 ("Schedule") to that certain Lease Agreement, 1988, as amended (the "Agreement"), between ITEL RAIL CORP ("Lessor"), and HARTFORD AND SLOCOMB RAILROAD COMPANY, as lessee ("Lessee") is made this 10th day of September, 1990, between Lessor and Lessee.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 23, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig.	Description	Numbers	Length	Dimensions		No. of Cars
				Inside Width	Height	
XP	70-Ton, Plate B, Boxcars	HS 5003, 5004, 5014, 5042 5051, 5121, 5122, 5165	50'6"	9'6"	10'7"	8
XP	70-Ton, Plate B, Boxcars	HS 5203, 5225, 5237, 5246	50'6"	9'6"	10'8"	4

3. A. The term of this Agreement with respect to each Car described in this Schedule shall commence on the date such Car is delivered to Pigeon Co-op ("Shipper") located on the railroad lines of Huron & Eastern Railway Company ("Huron & Eastern") ("Delivery") and shall expire as to all of the Cars 2 years from the earlier of (i) the date of Delivery of the last Car or (ii) the 60th day after the date of Delivery of the first Car ("Commencement Date"). Upon Delivery of the final Car, Lessor shall provide Lessee with a Certificate in the form of Exhibit A setting forth the Delivery Date for each Car, and the Commencement Date and Expiration Date of the Agreement with respect to all the Cars ("Initial Term"). The Certificate shall be deemed accurate, final and binding unless Lessee disputes such date in writing within 15 calendar days of receipt by Lessee of such Certificate.
- B. If the Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Agreement, the Agreement shall automatically be extended from calendar month to calendar month, for a period not to exceed 24 calendar months (each such calendar month an "Extended Term"). Provided, that the Cars

are not subject to the Boxcar Use Agreement dated _____, 1990 ("Use Agreement") between Lessee and Octoraro Railway, Inc., a copy of which is attached as Exhibit C, Lessor may terminate the Agreement at any time during the Initial Term or any Extended Term as to some or all of the Cars described in this Schedule by providing not less than 10 days prior written notice to Lessee.

4.
 - A. Lessor shall move each Car to Shipper's location on the railroad lines of Huron & Eastern.
 - B. Lessor agrees to pay to Lessee an annual rental fee of ("Rental Fee") for the use of Lessee's reporting marks and numbers on the Cars described in the Use Agreement. Lessor shall pay the initial Rental Fee to Lessee within 60 days from October 1, 1990 and shall thereafter pay the Rental Fee to Lessee within 60 days following October 1st of each year throughout the duration of the term of the Use Agreement.
 - C. If any Car(s) returns to Lessee's lines prior to the expiration or termination of the Use Agreement, Lessor shall be responsible for all costs associated with such Car(s) being entered into and removed from a storage facility ("Storage") by Lessee, including but not limited to a switching fee of _____ per car per occurrence and a storage charge of _____ per car per day, and for all costs associated with returning such Car(s) to the Shipper. Lessee shall notify Lessor upon the placement of any Car(s) into Storage. Lessee shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the Use Agreement, including advising Lessee's connecting carrier that the Cars have been placed into an assignment pool at Shipper's location on the lines of Huron & Eastern and that the connecting carrier should not return such Cars to Lessee during the term of the Use Agreement.
5. Lessor consents to Lessee's entering into the Use Agreement; provided, that Lessor shall perform Lessee's duties under the Use Agreement, that Lessee shall, only upon Lessor's instructions or consent, exercise its option to terminate, extend, renegotiate or request free storage under the Use Agreement, and that Lessee shall, if directed by Lessor, assign Lessee's interest in the Use Agreement to any party designated by Lessor.
6. Lessor shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule, except those delegated to Lessee in Subsection 5.B. of the Agreement. With respect to the Cars listed in this Schedule, Exhibit B attached hereto is hereby added to the Agreement or substituted for Exhibit B thereto. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
7. Lessor agrees to reimburse Lessee, within 30 days of Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by Lessee resulting from: a) ad valorem tax assessments on the Cars; and b) any assessment, levy or impost relating to any Car, the Agreement, or the delivery of the Cars, which remained unpaid as of the date of the delivery of the Cars to Lessee or which is assessed, levied or imposed during the term of the Agreement, except taxes on income or gross receipts

imposed on Lessee or sales or use tax imposed on mileage charges, car hire revenue, or the proceeds of the sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

8. Rent

A. Definitions

- (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties. Any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party during the Initial Term or any Extended Term, effective on the date of such sale, are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 8.A.(iii) hereinbelow).
- (ii) "Revenues Rates" is defined as the hourly and mileage car hire rates prescribed by the ICC in any applicable time period for each Car.
- (iii) "Revenues" is defined as the total revenues, calculated at the Revenue Rates, that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to, per diem and mileage, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.

B. Lessor shall receive _____ earned by each Car prior to and during the term of the Use Agreement.

C. Upon the expiration or early termination of the Use Agreement, Lessor shall _____ earned by each Car while such Car is off the Eligible Lines.

D. (i) In the event that as a result of any action or inaction by Lessee, Lessor shall receive or earn for the use of any Cars, Revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified in Subsection 8.A.(ii), Lessee shall pay to Lessor, within 10 days of Lessor's request, an amount equal to the difference between the Revenues such Cars would have

earned at the Revenue Rates and the amount of revenues actually received or earned for such Cars.

(ii) Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee, Lessee shall, within 10 days of Lessor's request, reimburse Lessor the amount of such abatement, reduction or offset.

(iii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.

E. Except as provided in this Schedule, any agreement between Lessee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Lessor's prior written approval if such Third Party Agreement affects the revenues earned by the Cars.

9. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.

10. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

Each party, pursuant to due corporate authority, has caused this Schedule to be executed by its authorized officer, and each of the undersigned declares pursuant to 28 U.S.C. Section 1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

ITEL RAIL CORPORATION

By: Robert K. Kelly
Title: Vice President & Treasurer
Date: September 10, 1990

HARTFORD AND SLOCOMB RAILROAD COMPANY

By: E. J. Fuchs III
Title: Pres.
Date: 9/12/90

EXHIBIT A

CERTIFICATE OF DELIVERY,
COMMENCEMENT DATE AND EXPIRATION DATE

<u>CAR REPORTING MARKS AND NUMBERS</u>	<u>DATE DELIVERED TO SHIPPER</u>
HS 5003	
HS 5004	
HS 5014	
HS 5042	
HS 5051	
HS 5121	
HS 5122	
HS 5165	
HS 5203	
HS 5225	
HS 5237	
HS 5246	

The Commencement Date of the Term of the Agreement dated _____, 1990 between Itel Rail Corporation and Hartford and Slocomb Railroad Company for the above referenced Cars shall be _____, 1990.

The Expiration Date for the above referenced Cars shall be _____, 1992.

ITEL RAIL CORPORATION
Authorized Representative

By: _____

Title: _____

Date: _____

EXHIBIT B

RUNNING REPAIRS

BOXCARS

Angle Cocks	Wheel Assemblies
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Air Hose Supports
Hand Brakes	Brake Beams and Levers
Truck Springs	Door Hardware (Not Replacement of Door)

EXHIBIT C

BOXCAR USE AGREEMENT

THIS BOXCAR USE AGREEMENT (the "Use Agreement") is made as of this _____ day of _____, 1990 between HARTFORD AND SLOCOMB RAILROAD COMPANY ("Railroad") and OCTORARO RAILWAY, INC. ("User").

Railroad and User agree as follows:

1. Railroad shall supply User with the following equipment (the "Cars") subject to the terms and conditions of this Use Agreement:

AAR Mech Desig.	Description	Numbers	Length	Dimensions		No. of Cars
				Inside Width	Height	
XP	70-Ton, Plate B, Boxcars	HS 5003, 5004, 5014, 5042, 5051, 5121, 5122, 5165	50'6"	9'6"	10'7"	8
XP	70-Ton Plate B, Boxcars	5203 5225, 5235, 5237, 5246	50'6"	9'6"	10'8"	4

2. User agrees to and Railroad acknowledges that User intends to make the Cars subject to an assignment pool at Pigeon Co-op ("Shipper") located on the railroad lines of Huron & Eastern Railway Company ("Huron & Eastern") at Elkton, Michigan as provided for in Car Service Rule 16 and under the provisions of Car Service Directive 145 of the Code of Car Service Rules, AAR Circular No. OT-10 ("Assignment").
3. The term of this Use Agreement (the "Term"), with respect to each Car shall commence on the first day of the month the first Car is delivered to Shipper ("Delivery") and shall expire as to all of the Car 2 years from the earlier of (a) the date of Delivery of the last Car or (b) the 60th day after the date of Delivery of the first Car. Upon Delivery of the final Car, Railroad will provide User a Certificate in the form of Exhibit A setting forth the expiration date of the Use Agreement with respect to all the Cars. The Certificate shall be deemed accurate, final and binding unless User disputes such date in writing within 14 calendar days of receipt by User of such Certificate.
4. User shall comply with the handling carrier's obligations under the AAR Interchange Rules while any Car is in User's possession.
5. User shall return empty Cars to Shipper prior to returning any similar Cars leased by or assigned to User from other parties subsequent to the date

of this Use Agreement, purchased by User subsequent to the date of this Use Agreement, or received in interchange; provided, that this shall in no event prevent or prohibit User from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor. If any Car remains on User's lines because User has not given priority to the Cars as specified in this Section, User shall be liable for and remit to Railroad an amount equal to the revenues which would have been generated if such Car had been in the possession and use of a foreign road for the entire period during which such Car is on User's railroad line as a result of such failure with each Car traveling miles per day.

6. User shall ensure that any Cars physically on its lines shall not return to the Railroad's lines during the Term. Railroad shall use its best efforts to prevent any Car from being interchanged onto its lines during the Term, including advising Railroad's connecting carrier that the Cars have been placed into an assignment pool on the lines of Huron and Eastern and that the connecting carrier should not return such Cars to Railroad during the Term. If any Car returns to Railroad's lines during the Term, User shall be responsible for all costs associated with returning such Car to Shipper.
7.
 - A. Railroad shall at its expense perform in a timely manner all repairs, maintenance, replacement of parts and mandated modifications as are needed to keep any Car in good working order and repair, suitable for loading and interchange and in accordance with the Field Manual of the AAR Interchange Rules and the Office Manual of the AAR Interchange Rules (collectively "Interchange Rules"), the Federal Railroad Administration ("FRA") rules and the rules of any other applicable regulatory body ("Maintenance"). However, such Maintenance shall be at User's expense if it was occasioned by (i) damage (which shall not include ordinary wear) while in User's possession, custody or control, (ii) damage occurring from use other than permitted under this Use Agreement, or (iii) damage for which User would have been responsible under the Interchange Rules had the Car been a foreign car (including damage not noted at time of interchange to User). User shall promptly notify Railroad of any Maintenance required, providing the time, place and nature of any accident or bad order condition.
 - B. To facilitate continued immediate use of any Car, User may make running repairs (utilizing User's own employees, but not any private repair facility or any private contractor on User's property) to those parts of any Car specified in Exhibit B, but User shall not perform or cause to be performed any other Maintenance on any Car without Railroad's prior written consent. Railroad shall submit a monthly invoice in AAR format for running repairs performed on any Car by User or by another railroad which has billed and received payment therefor from Railroad.
8.
 - A. When used in this Use Agreement, each of the following terms shall have the definitions indicated:
 - (i) "Eligible Lines" means the railroad lines owned and operated by User as of the date this Use Agreement is executed by the parties. If User's lines expand through

purchase, User's merger with another railroad or otherwise or if User's lines are sold to and become lines of another railroad, then lines other than the Eligible Lines shall be deemed to be lines of a foreign road for purposes of determining Revenues and for purposes of distinguishing the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by User ("Distinction"), User shall provide Railroad with car movement records which effect such Distinction. If User sells or otherwise disposes of a part but not all of the railroad lines owned and operated by User as of the date this Use Agreement is executed by the parties, "Eligible Lines" shall mean only that part retained by User.

(11) "Revenue Rates" means the hourly and mileage car hire rates prescribed by the ICC in any applicable time period for each Car.

(111) "Revenues" means the total revenues, calculated at the Revenue Rates, that are earned or due in any applicable time period for the use or handling of the Cars on all railroad lines other than Eligible Lines, including, but not limited to, hours ("Hourly Revenues") and mileage ("Mileage Revenues"), whether or not collected and received by Railroad, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of User.

B. User shall pay Railroad rent for each Car after its Delivery calculated as follows:

(1) "Base Rent" means the dollar amount for any calendar quarter (or applicable portion thereof) which equals the Hourly Revenues the Car would have earned in the aggregate during such calendar quarter (or applicable portion thereof) if such Cars had been on railroad lines other than Eligible Lines or the railroad lines of Huron & Eastern for _____ during such calendar quarter, with each Car traveling _____ miles per day and with each Car earning Hourly Revenues at the Revenue Rates as defined above.

(11) If Hourly Revenues earned from all Cars in any calendar quarter or applicable portion thereof are equal to or less than the Base Rent, Railroad shall retain a sum equal to _____ of such Hourly Revenues.

(111) If Hourly Revenues earned from all Cars in any calendar quarter or applicable portion thereof exceed the Base Rent, Railroad shall retain an amount equal to the Base Rent _____ of such Hourly Revenues in excess of the Base Rent and User shall be _____ Hourly Revenues received in excess of Base Rent ("User's Revenue Share"); provided, that Railroad shall retain all Hourly

Revenues earned from all Cars after Delivery until the total amount of what otherwise would be User's Revenue Share shall have become equal to Railroad's expenses, if any, for remarking and delivering such Cars to User.

(iv) User's rent shall be and Railroad shall

9. A. Railroad shall allow User to grant to Huron & Eastern under the Assignment, for each Car that is interchanged empty or made empty on Huron & Eastern's railroad lines, through and including the date and hour that such Car is interchanged loaded off Huron and Eastern's railroad lines; provided, that Huron and Eastern provides Railroad a report within 60 days after the end of each calendar quarter that lists for such quarter (i) the reporting marks and number of each Car that qualifies for Reclaim, (ii) the date and hour such Car was received empty or made empty on Huron & Eastern's lines, (iii) the date and hour such Car was interchanged loaded off Huron & Eastern's lines, (iv) the total number of Reclaim hours, and (v)
 - B. shall be handled in accordance with AAR Car Hire Rule 13, paragraph (d).
10. Upon any abatement, reduction or offset, as set forth in Subsection 8.A. (iii), User shall, within 10 days of Railroad's request, reimburse Railroad for such amount.
11. If, for any calendar quarter, Revenues received by Railroad for the Cars in the aggregate while they were on railroad lines other than the Eligible Lines or the railroad lines of Huron & Eastern are less than an amount equal to what the Cars would have earned had they been on railroad lines other than Eligible Lines or the railroad lines of Huron & Eastern for days during such quarter, with each Car traveling miles per day and with each Car earning Revenues at the Revenue Rates ("Minimum Rent"), then Railroad may so notify User. Within ten (10) days of receipt of such notice from Railroad, User may either:
 - A. Notify Railroad of intent to pay Railroad the shortfall between the Minimum Rent and the Revenues received by Railroad for the Cars in such calendar quarter and agree to pay the shortfall, if any, between the Minimum Rent and the Revenues received by Railroad for the Cars in each subsequent calendar quarter for the duration of the term. User shall pay Railroad such shortfall not later than 60 days after receiving an invoice.
 - B. Elect in writing not to pay Railroad such shortfall for such quarter. In such event, Railroad may terminate the Use Agreement with respect to all or any of the Cars upon not less than 10 days written notice to User at any time during the Use Agreement.
12. Railroad may at its expense replace any or all Cars with equipment of similar specification and quality upon not less than 10 days prior written notice.

13. Upon the expiration or other termination of this Use Agreement with respect to any Car, User shall ensure that each Car is removed from the provisions of the Assignment and shall return such Car to Railroad at the interchange point on User's lines designated by Railroad, and each Car returned to Railroad shall be (a) free of any and all Rule 95 damage and (b) free of all accumulations or deposits from commodities transported in or on it while in the service of User. At Railroad's option, and User's expense, User shall remark each Car to bear new reporting marks and numbers designated by Railroad, and use its best efforts to load such Car with freight and deliver it to a connecting carrier for shipment.
14. This Use Agreement and User's rights are subject and subordinate to the rights and remedies of any lender, owner or other party which finances the Cars.
15. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the mail, postage prepaid, certified or registered, or when transmitted and received by telex addressed as follows:
- | | |
|---|--|
| If to Railroad: | If to User: |
| Hartford & Slocomb Railroad
Company
550 California Street
San Francisco, CA 94104
Attention: Don Chute, Director
Car Hire Accounting | Octoraro Railway, Inc.
P.O. Box 146
Kennett Square, PA
Attention: President |
16. This Use Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.
17. This Use Agreement may be executed in two counterparts and such counterparts together shall constitute one and the same contract.

HARTFORD AND SLOCOMB RAILROAD COMPANY

OCTORARO RAILWAY, INC.

By: _____

By: Thomas J. Borczyk

Title: _____

Title: Vice President & GM

Date: _____

Date: 8/14/90

EXHIBIT A

Certificate of Delivery

Boxcar Use Agreement dated _____, 1990

Car Reporting
Marks and Numbers

Date Delivered
to Shipper

HS 5003

HS 5004

HS 5014

HS 5042

HS 5051

HS 5121

HS 5122

HS 5165

HS 5225

HS 5235

HS 5237

HS 5246

The term of the Boxcar Use Agreement dated _____, 1990 between
Hartford and Slocomb Railroad Company and Octoraro Railway, Inc. will expire on
_____, 1992.

EXHIBIT B

RUNNING REPAIRS

BOXCARS

Angle Cocks	Wheel Assemblies
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Air Hose Supports
Hand Brakes	
Brake Beams and Levers	
Truck Springs	
Door Hardware (Not Replacement of Door)	